

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

FIFTH THIRD BANK, )  
NATIONAL ASSOCIATION, )  
Plaintiff, )  
v. )  
METRO BUSINESS SYSTEMS, LLC., *et al.*, )  
Defendants. )

Civil Action No. 1:21-cv-832

**ORDER**

On April 29, 2022, United States Magistrate Judge Theresa C. Buchanan entered the Report and Recommendation (the “Report”) in this case, recommending that summary judgment be entered in favor of Plaintiff Fifth Third Bank and against Defendants Metro Business Systems, LLC (“MBS”), Metro Document Services, LLC (“MDS”), and Jerry Allen (“Allen”).

On May 25, 2022, Magistrate Judge Buchanan entered a Supplemental Report and Recommendation (the “Supplemental Report”), recommending that damages of \$16,185,328.53 be awarded to Plaintiff, plus a per diem of \$1,587.27 for each day after May 12, 2022 until the judgment is satisfied.

Upon consideration of the record and Judge Buchanan’s Report and Supplemental Report, to which no objections have been filed, and having found no clear error,<sup>1</sup>

The Court **ADOPTS**, as its own, the findings of fact and recommendations of the United States Magistrate Judge, as set forth in the Report (Dkt. 90) and Supplemental Report (Dkt. 92).

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<sup>1</sup> See *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (in the absence of any objections to a magistrate’s report, the court “need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”).

Accordingly,

It is hereby **ORDERED** that plaintiff's motion for summary judgment (Dkt. 80) is **GRANTED IN PART AND DENIED IN PART**. The motion is granted with respect to Counts III, IV, VI, and VII. Count III asserts fraud against MBS. Count VI asserts breach of contract against MBS. Count IV asserts claims of alter ego and successor liability, claiming that (i) Allen is the alter ego of MBS and Allen is liable for MBS's fraud and (ii) MDS is the successor of MBS and MDS is liable for MBS's fraud and breach of contract. Count VII asserts that Plaintiff is entitled to payment as a secured party to the contract. The motion is denied as moot with respect to Count V, which alleges a claim in the alternative for money had and received.

It is further **ORDERED** that **JUDGMENT** be entered in favor of Plaintiff Fifth Third Bank and against Defendants Allen, MBS, and MDS.

It is further **ORDERED** that judgment is entered against Defendants Allen, MBS, and MDS, jointly and severally, and in favor of Plaintiff on Counts III, IV, VI, and VII of the Complaint in an amount of \$16,185,328.53 plus a per diem of \$1,587.27 for each day after May 12, 2022 until the judgment is satisfied.

It is further **ORDERED** that Counts III of the Complaint is **DISMISSED** as moot.

It is further **ORDERED** that Plaintiff's motion for default judgment (Dkt. 84) is **DENIED AS MOOT**.

It is further **ORDERED** that Plaintiff's motion to expedite entry of final judgment (Dkt. 93) is **GRANTED**.

The Clerk of the Court is directed to enter Rule 58 judgment against Defendants, jointly and severally, and in favor of Plaintiff on Counts III, IV, VI, and VII of the Complaint in an amount

of \$16,185,328.53 plus a per diem of \$1,587.27 for each day after May 12, 2022 until the judgment is satisfied.

The Clerk is further directed to provide a copy of this Order to all counsel of record, to Defendants' last known addresses of record, and to place this matter among the ended causes.

Alexandria, Virginia  
June 16, 2022



**T. S. Ellis, III**  
**United States District Judge**